

United States District Court
Eastern District of New York

1-17-21

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 03 2021 ★

BROOKLYN OFFICE

ALEX TAVERA

Petitioner



Honorable

CASE NO. # 00-CR-456 - ~~DR~~ TRAEGER

Evidentiary Hearing
Requested.

v.

United States of America
Respondent ✓

Supplement to Mr. Tavera's Motion Seeking
Relief Under Writ of Error Coram Nobis

Comes Now, Petitioner, ALEX TAVERA, Pro Se
Respectfully Moving to have his unlawful title
18 U.S.C. § 924(c) conviction vacated by Petition
For Writ of Error Coram Nobis. The Petitioner
brings the instant Motion, AS AN EXTRAORDINARY
remedy, where he is no longer in custody for
his invalid § 924(c) conviction. KOVACS v.
United States, 744 F.3d 44, 49, 54 (2nd Cir. 2014);
FLEMING v. United States, 146 F.3d 88, 89-90

(2nd cir. 1998) (describing Coram Nobis Petitions AS "A REMEDY OF last resort for Petitioners who Are no longer in custody Pursuant to a criminal conviction".)

I. Facts of The Case

Nearly Two decades ago, the Petitioner was convicted in this court for conspiracy to commit Hobbs Act Robbery and Use of A Firearm during and in relation to A crime of violence (conspiracy to commit Hobbs Act Robbery), in violation of Title 18 U.S.C. § 1951(A) AND title 18 U.S.C. § 924(c). The Petitioner was released from custody, after finishing his sentence and his supervised release, many years ago (2005).

In June of 2019, The United States Supreme Court decided Davis v. United States, 139 S.Ct. 2311 (2019), which invalidated the residual clause of § 924(c)(3)(B). In doing so, the Court reaffirmed that "A Vague Law, is No Law At All". SEE Davis, 139 S.Ct. at 2323.

On July 1, 2020, the Eleventh Circuit Affirmed the Petitioner's denial for Title 28 U.S.C. § 2255 relief, based on the Argument that his Prior 924(c) conviction was not a "violent Felony" under the Armed Career Criminal Act (ACCA) of title 18 U.S.C. § 924(e), following the decision in DAVIS v. United States, 139 S. Ct. 2319 (2019). SEE Alex Tavera v. United States, NO. 18-13499 (11th Cir. July 1, 2020).

The Instant Action follows.

II. Jurisdiction

It has been well established that a Coram Nobis "is an extraordinary remedy available only in rare cases", and is "typically available only when habeas relief is warranted because the Petitioner is no longer in custody." KOVACS, 744 F.3d at 49, 54. To obtain a writ of Coram Nobis, the Petitioner "must demonstrate that :1) there are circumstances

Compelling such action to achieve justice.

2) Sound reasons exist for failure to seek appropriate earlier relief, and 3) the petitioner continues to suffer legal consequences from his conviction that may be remedied by granting of writ."

KOVACS, 744 F.3d at 49.

Here, the Petitioner satisfies the three criteria standard set forth in KOVACS. First, the decision in DAVIS establishes that the Petitioner was convicted for something that is no crime at all [i.e., §924(c)(3)(B)]. DAVIS, 139 S.Ct. at 2323 ("A Vague Law is NO LAW AT ALL"). Second, persons exist for failure to bring this action earlier, where the DAVIS decision was not decided until the Petitioner had been released from custody on the instant offense. Third, the Petitioner continues to suffer legal consequences where his prior unlawful §924(c) conviction continues to count as a "violent felony" under the A.C.C.A. pursuant to his current federal

Sentence. And, if Granted Coram Nobis Relief, he will be allowed to vacate such unlawfully enhanced Sentence pursuant to 28 U.S.C. § 2255 (F)(4). SEE STEWART v. United States, 646 F.3d 851, 865 (11th Cir. 2011) (Holding that a defendant may seek post-conviction relief from an enhanced Sentence, where Judgment of a Prior conviction is vacated.).

Thus, the district court has jurisdiction to entertain the instant motion for the reasons stated above.

III. Argument And Citations of Authority

A. - Petitioner is Actually Innocent of violating § 924(c) in light of DAVIS and such conviction must be vacated, where

he was convicted for a nonexistent offense.

Recently, the Supreme Court Found an offense for using or carrying a firearm in the commission of a conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) and 18 U.S.C. § 924(c)(3)(i) was invalid. DAVIS, 139 S. CT. At 2324-27, 2356. In doing so, the Court concluded that § 924(c)(3)'s residual clause defining of "crime of violence" was too vague to stand. Id. In writing for the Court, Justice Gorsuch stated that:

"[I]n Our Constitutional order, a vague law is no law at all. Only the People's Elected representatives in Congress have the power to write new federal laws. And when Congress EXERCISE that Power, it has ~~to~~ write statutes that give ordinary People fair warning about what the law demands of them. Vague laws transgress both of those constitutional requirements."

Id.

Following DAVIS, A conviction for using A Fire
arm in commission of A conspiracy to commit
Hobbs Act Robbery, is no longer A Federal Crime.
United States v. Barrett, 937 F.3d 126

(2nd cir. 2019) (holding that Hobbs Act Robbery-Consp
iracy - §1951(A), is not A §924(c) predicate crime
of violence); Brown v. United States, 942
F.3d 1069 (11th cir. 2019) (same). As A result, the
Petitioner's conviction must be VACATED.

Here, the Petitioner Entered A guilty plea
for something that did not violate the laws of
the United States [i.e., §924(c)(3)(B)]. Thus, the
application of Contract law binds the Agreement
and the decision of DAVIS AND Barrett,
both demand that the Petitioner's §924(c)
conviction be VACATED, on the holding that
"[A] vague law is no law at all." United States
v. St. Hubert, 909 F.3d 335, 344 (11th cir. 2018)
(holding that where A defendant pleads guilty to
an invalid §924(c) offense, A plea of guilty

CANVASSING SUCH JURISDICTIONAL CHALLENGE, WHERE
SUCH A DEFENDANT HAS BEEN INDICTED AND CONVICTED
FOR A NON-OFFENSE), CITING CLASS v. UNITED
STATES, 583 U.S. —, 138 S.C.T. 798, 807-08(2018),
SEE ALSO ADAMS v. MURPHY, 453 F.2d 224, 225
(5th CIR. 1981) ("NO-WHERE IN THIS COUNTRY CAN ANY
MAN BE CONDEMNED FOR A NON-EXISTENT CRIME".)

AS A RESULT, THIS COURT SHOULD FIND THAT
THE USE OF A WRIT OF CORAM ~~NOBIS~~ IS APPROPRIATE
IN THIS CASE TO VACATE THE UNLAWFUL §924(C)
CONVICTION.

Conclusion

WHEREFORE, THE PETITIONER PRAYS ~~THAT~~ THE
INSTANT WRIT OF CORAM NOBIS RELIEF IS
GRANTED.

Respectfully Submitted

Alex Tavera

ALEX TAVERA #58510-053

P.O. Box 1032

Coleman FL 33521

FEDERAL CORR. COMPLEX-Medium

Certificate of Service

I Hereby Certify that A True and Correct
Copy of The foregoing motion has been Sent on
this day 18th ~~January~~, 2021 via United
States Postal Service, First class Postage
Pre-paid, to the Following Party:

Michelle DeLong - A.U.S.A.
271 Cadman Plaza East
Bklyn. NY. 11201

A/EK TAXEPK #58510-053

P.O. Box 1032

Coleman, FL 33521

Federal Correctional Complex

Coleman-Medium B-2

* LEBAX-MAXI *



TAMPA FL 335
SAINT PETERSBURG
25 JAN 2021 PM 3:11



TO: Clerk of U.S. District Court
Eastern District of New York—
225 CADMAN PLAZA EAST

11201-183299

